

such a conviction authorizes the imposition of a prison sentence of up to 10 years. 18 U.S.C. § 924(a)(2). However, under the ACCA, if the defendant has three previous convictions “for a violent felony or a serious drug offense, or both,” the defendant is subject to a prison sentence of not less than 15 years. 18 U.S.C. § 924(e)(1). On February 6, 2008, the court sentenced Ramey to a 180-month prison term under the ACCA enhancement after finding that he had three qualifying Alabama state convictions; one for second-degree burglary, *see* Ala. Code § 13A-7-6, and two for third-degree burglary, *see* Ala. Code § 13A-7-7. His conviction and sentence were affirmed on direct appeal. *United States v. Ramey*, 294 F.App’x. 596 (11th Cir. 2008).

Ramey claims in the instant motion that he was improperly sentenced because his two Alabama convictions for third-degree burglary do not count as violent felonies under the ACCA. In support, Ramey relies primarily upon *Descamps v. United States*, 570 U.S. ___, 133 S. Ct. 2276 (2013), and the Eleventh Circuit’s opinion in *United States v. Howard*, 742 F.3d 1334 (11th Cir. 2014), which applied the analysis in *Descamps* to Alabama’s third-degree burglary statute. The government initially filed a response opposing relief, arguing that Ramey’s claim is time-barred under 28 U.S.C. § 2255(f).² The government also maintained in the

² Doc. no. 7.

alternative that Ramey’s third-degree burglary convictions might still qualify as violent felonies based upon the “residual clause” of 18 U.S.C. § 924(e)(2)(B)(ii),³ even if the offense might not qualify as a “generic burglary” under *Taylor v. United States*, 495 U.S. 575 (1990).⁴ Ramey then filed a reply in support of his § 2255 motion.⁵

Subsequently, on June 26, 2015, the Supreme Court issued its opinion in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015), holding that the residual clause of § 924(e)(2)(B)(ii) is unconstitutionally vague. In light of that decision, the government asked for leave to file a supplemental response in the present case, which was granted.⁶ In its supplemental response, filed August 28, 2015, the government acknowledges that *Johnson* precludes reliance upon the residual clause to support that Ramey’s Alabama third-degree burglary convictions might be violent felonies under the ACCA.⁷ The government now admits that, under *Descamps* and *Howard*, those two convictions cannot be deemed violent felonies on

³ The ACCA defines the term “violent felony” to include “any crime punishable by imprisonment for a term exceeding one year ... that — (ii) is burglary, arson, or extortion, involves use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another.*” 18 U.S.C.A. § 924(e)(2)(B)(ii) (emphasis added). The residual clause is the italicized portion of the above statutory language.

⁴ Doc. no. 7.

⁵ Doc. no. 9.

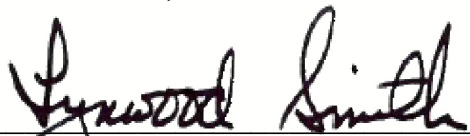
⁶ Doc. nos. 10-11.

⁷ Doc. no. 13 ¶ 3.

the theory that third-degree burglary under Alabama law qualifies a “generic burglary,” and the government also expressly withdraws its assertion that Ramey’s claim is barred by the statute of limitations.⁸

Based on the government’s express concessions, the motion to vacate, set aside, or correct defendant’s sentence is GRANTED. A Judgment to correct defendant’s sentence consistent with this order will be entered contemporaneously herewith.

DONE and ORDERED this 21st day of December, 2015.



United States District Judge

⁸ *Id.* ¶ 4.